English Courts regarding Order 59 rule 38 of the English Rules (see *Stock* v. *Central Midwives Board*[3] and *Allender* v. *Council of the Royal College of Veterinary Surgeons*[4]).

What section 44 of the Town Boards Enactment requires is that the appeal shall be "commenced" within 15 days. That is the condition that must be fulfilled and if within 15 days a notice is filed setting out the grounds of appeal then in my view both the letter and the spirit of the condition are fulfilled. As I had occasion to observe in the case of *Rembha Bai & Ors.* v. *Jasani*[5] :—

> "Public policy demands that a successful litigant should have notice within the time prescribed by law that his position may be challenged."

There is one other point which, although not a great deal was made of it before us, should be mentioned. Sub-section (iv) of section 44 provides that :—

> "Every such appeal shall be heard before the Court of a Judge and the decision of such Court shall be final and conclusive."

Here what is meant by the "decision" of the Court is clearly a decision of the issues raised by the appeal after the appeal has been heard. It has no application to a case like the present where in effect, whatever be the exact wording of the formal order that was drawn up, the appeal was not heard and was not decided.

I would allow the present appeal with costs and set aside the order of the High Court of 14th November, 1960.

Good J.A.: I have had the advantage of reading the judgment of the learned Chief Justice with which I am in complete agreement. For the same reasons as those which he has given, I too would allow the appeal with costs.

Ismail Khan J.: I have had the advantage of reading the judgment prepared by My Lord the Chief Justice. I am in agreement with the views expressed therein and have nothing to add.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Braddell & Ramani.*

LEE SHIP v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill J.A. and Rigby J.) November 5, 1960]

[J.B. — F.M. Criminal Appeal No. 12 of 1960]

Criminal Procedure — Police investigation — "Meddling" with bicycle lamp — Whether a "statement" made in the course of police investigation — Criminal Procedure Code (Cap. 6), s.113.

Gaming — Duplicate copy book of staking slips in characters lottery falling from bicycle lamp on "meddling" by accused at police station.

In this case the appellant was apprehended by two police constables and was taken to the Police Station. On his way to the Police Station or at the Police Station itself, the appellant was seen by the police constables to meddle with his bicycle lamp and a duplicate copy book of staking slips relating to a 10,000 characters lottery fell from it. The question for decision was "whether the evidence of the action of the appellant in 'meddling' with the bicycle lamp at the police station was evidence of a 'statement' made in the course of a police investigation."

Held: the evidence of the action of the accused in "meddling" with the bicycle lamp at the police station was not a "statement" made in the course of a police investigation.

COURT OF APPEAL (CRIMINAL).

R. Murugason for the appellant.

Pawan Ahmad (Deputy Public Prosecutor) for the respondent.

Rigby J.: This appeal comes before this Court by way of a reference under section 34 of the Courts Ordinance, 1948, that a point of law is involved which it is desirable in the public interest to have determined by the Court of Appeal. The particular point of law on which the opinion of this Court is sought, as set out in the Schedule to the Certificate, is :—

> "Whether the evidence of the action of the appellant in 'meddling' with the bicycle lamp at the police station was evidence of a 'statement' made in the course of a police investigation."

The appellant was charged under section 4(1)(c) of the Common Gaming Houses Ordinance in that at the time and date specified in the charge he was found at Main Road, Kulai, in the State of Johore, assisting in carrying on an illegal lottery, to wit, 10,000 characters lottery.

The main facts of the case were that at some time on the afternoon of 13th November, 1959, two police constables, acting on information received that same afternoon, apprehended the appellant in Main Road, Kulai, at the time he was found wheeling a bicycle. He was taken to the police station and it would appear, although the evidence is by no means clear on this point, that either on the steps leading to the police station or in the police station itself he was allegedly seen by the two police constables meddling with the lamp attached to the bicycle, and in the course of so meddling something fell from the lamp which, upon being picked up by the police constables, was found to be, and subsequently proved to be, the duplicate copy book of staking slips relating to a 10,000 characters lottery. The defence put forward was that this was a frame-up and the lottery book had been deliberately planted in the lamp by some person anxious to put the appellant into trouble. The appellant further alleged that he opened the front of the lamp at the request and instigation of one of the constables present and not of his own volition.

A number of points have been raised before us in the course of this appeal. It was first argued that the charge related to "carrying on an illegal lottery" whereas under section 4(1)(c) of the Common Gaming Houses Ordinance the particulars of the offence so described in that sub-section are :—

> "assists in carrying on a public lottery."

It was conceded by the learned Deputy Public Prosecutor that though the charge was defective in that it was badly drafted it was not a nullity and that the appellant, as was clear from the course of the trial itself, was in no way prejudiced by the defective nature of the charge. With that view we are in complete agreement. We are satisfied that the charge, although it was defective, was abundantly clear to the appellant and that he was charged with, in effect, carrying on a public lottery, that is to say, a 10,000 characters lottery. We are quite satisfied that the appeal on this ground must fail.

The next ground of appeal taken was that there was no evidence of conscious knowledge of the lottery tickets or counterfoil book of tickets. That ground of appeal must necessarily be connected with the facts and the findings of fact by the learned Magistrate. The facts, as I have said, were that on his way to the police station, or at the police station itself, the appellant was seen by the police constables to meddle with his bicycle lamp and this book of tickets fell from it. It has been argued before us — and argued with some cogency — that, on the face of it, it is contrary to all reason and common sense that the appellant, in those circumstances, in the police station, should openly, or even surreptitiously, have attempted to take the tickets from the lamp. There is no doubt that there is some force and cogency in that argument. But it was a matter which, of course, was clearly before the learned Magistrate, and he found as a fact that he did not accept the allegation of the appellant that he was asked by the police constable to open the lamp. He found as a fact that the appellant consciously and of his own volition opened the lamp — presumably, with the object of taking out and concealing or throwing away the tickets. We are, of course, bound by that finding of fact. On those facts as found it must necessarily follow that the appellant, in opening the lamp and in attempting to take out the tickets, had conscious knowledge of possession of the tickets in that lamp. This ground of appeal must also fail.

The last point raised was the point as raised before us under the Schedule to the Certificate by which the appeal comes before us, that is to say, whether the evidence that the action of the appellant in meddling with the bicycle lamp at the police station was tantamount to and ought to be regarded as "evidence of a statement made in the course of a police investigation". The answer to that question appears to us, upon the facts as found by the learned Magistrate, quite clearly to be that the action of the appellant, consciously and of his own accord, in opening the lamp cannot conceivably fall within the provisions of section 113 of the Criminal Procedure Code, as being tantamount to a statement to a police officer in the course of an investigation. Indeed it would seem to us to be clearly contrary to common sense and logic that conduct of that kind by an accused person could possibly be held to be regarded in the same light as a statement made in the course of a police investigation. It was a voluntary and spontaneous act done by the appellant of his own accord and, on the facts as found by the learned Magistrate, was clearly without any prompting from the police constable. The answer, therefore, to the reference as it stands before us is in the negative.

For these reasons we are of the opinion that this appeal must be dismissed.

Appeal dismissed.

Solicitors: *Murugason & Co.*

CHUA LAI SENG v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) May 27, 1960]

[Penang — Criminal Appeal No. 10 of 1960]

Road Traffic — Licensing — Using vehicle for purpose other than it was licensed — Third party insurance — Road Traffic Ordinance, 1958, s.22(2), s.74.

The appellant appealed from his conviction by the learned Magistrate for using his motor-car contrary to sections 22(2) and 74 of the Road Traffic Ordinance. The main ground of appeal was that the Magistrate erred in law in holding that the licensing of a privately owned vehicle was limited to the carrying of passengers only and that he misdirected himself in holding that a vehicle licensed for a private purpose had become a goods vehicle for commercial purposes by reason of the fact that the appellant was carrying in that vehicle his own goods for sale by himself and not for sale or reward to any other person.

Held: the appellant used his private vehicle for the carriage of goods within the meaning of the Ordinance and as such he was saving himself from the substantially heavier tax that he would have to pay if the vehicle that he had been using had been licensed as a private carrier's vehicle.

Obiter: ". . . . the object of these particular sections of the Ordinance . . . . is twofold: to increase the revenue of the country by making it incumbent upon persons who wish to use their vehicles for the carriage of goods to pay a higher licensing fee for such a purpose and . . . . . to protect from unfair competition the legitimate interests of *bona fide* carriers of goods for reward or hire who have paid the higher licensing fees required for such a purpose."

MAGISTRATE'S CRIMINAL APPEAL.

Mrs. B. H. Oon for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): I am satisfied that this appeal must be dismissed. The appellant was convicted of using his motor car for a purpose other than the purpose for which the licence was granted, contrary to the provisions of section 22(2) of the Road Traffic Ordinance, 1958. He was further convicted under the 2nd charge of using the vehicle in circumstances in which there was not in force in relation to the use of the motor vehicle a policy of insurance in respect of third party risks, contrary to the provisions of section 74 of the Road Traffic Ordinance. The nature of the 2nd charge and the conviction arose really